

FILED
Clerk's Office
USDC, Mass.
Date 4/30/04
By Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

BRIAN M. ANGER, NDI INTERNATIONAL, INC.
and NORTHEAST DISPLAY, INC. 401(K) SAVINGS
AND INVESTMENT PLAN,

Defendants.

COMPLAINT

CIVIL ACTION
FILE NO.

RECEIPT # NJA
AMOUNT \$
SUMMONS ISSUED Y
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK PCN
DATE 4/30/04

Plaintiff, Elaine L. Chao, Secretary of Labor, United States Department of Labor (the
“Secretary”) alleges:

(1) This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or the “Act”), 29 U.S.C. §§ 1001 *et seq.*, as amended, and is brought to obtain equitable relief, to redress violations, to obtain restitution from employee benefit plan fiduciaries and parties in interest, and to obtain other appropriate relief necessary to enforce the provisions of Title I of ERISA, pursuant to ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5).

JURISDICTION AND VENUE

(2) The Court has jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

(3) Venue of this action lies in the District of Massachusetts pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

DEFENDANTS

(4) The Northeast Display, Inc. 401(k) Savings and Investment Plan (the "Plan") is an employee pension plan within the meaning of ERISA §3(3), 29 U.S.C. §1002(3) and is subject to coverage of the Act pursuant to §4(a), 29 U.S.C. §1003(a). It was established by Adoption Agreement with an effective date of January 1, 1994 to provide retirement and death benefits for the employees of NDI, International, Inc., doing business as Northeast Display, Inc., a Massachusetts corporation. The Plan had offices in Worcester, Massachusetts and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief may be granted.

(5) At all times relevant to this action, NDI International, Inc., ("NDI") doing business as Northeast Display, Inc., a Massachusetts corporation, was the Plan Sponsor of the Plan. At all times relevant to this action, NDI was the named Plan Administrator of the Plan. As such, NDI was a fiduciary with respect to the Plan within the meaning of ERISA §3(21), 29 U.S.C. §1002(21). Furthermore, at all relevant times, NDI was a party in interest with respect to the Plan within the meaning of ERISA §3(14)(A) and (C), 29 U.S.C. §1002(14)(A) and (C).

(6) At all times relevant to this action, Brian M. Anger served as President and Chief Executive Officer of NDI. At all times relevant to this action, Brian M. Anger owned approximately ninety-six (96) percent of the stock of NDI. Furthermore, at all times relevant to this action, Brian M. Anger served as trustee of the Plan and, at all times material hereto, exercised authority or control respecting management or disposition of assets of the Plan.. As such, he was a fiduciary with respect to the Plan within the meaning of ERISA §3(21), 20 U.S.C. §1002(21) and a party in interest with respect to the Plan within the meaning of ERISA §3(14)(A), (C), (E) and (H), 29 U.S.C. §1002(14)(A), (C), (E) and (H).

(7) At all times relevant to this action, Brian M. Anger acted on behalf of NDI as the named Plan Administrator of the Plan. As such, he was a fiduciary with respect to the Plan within the meaning of ERISA §3(21)(A), 29 U.S.C. §1002(21)(A) and a party in interest to the Plan within the meaning of ERISA §3(14)(A), 29 U.S.C. §1002(14)(A).

(8) According to Plan documents, the Plan was to be funded by withheld employee contributions in amounts ranging from 1% to 15% of employee salaries in accordance with each employee participant's election. The withheld contributions on behalf of each Plan participant during the pertinent period became assets of the Plan by operation of 29 C.F.R. § 2510.3-102.

(9) Over the period January 1, 1998 through April 30, 2003, Defendant NDI failed to forward, and Defendant Anger failed to ensure the forwarding of, withheld employee contributions in a timely manner.

(10) During the pertinent period, Defendant NDI failed to forward and Defendant Anger failed to ensure the forwarding of, withheld employee contributions to the Plan in an amount totaling \$65,346.86 to the Plan. This sum constituted employee contributions withheld for the months of April and October 1998 and for the period April 1, 2002 through September 30, 2002. These employee contributions were not forwarded to the Plan, but were retained by NDI and used to satisfy corporate expenses.

(11) By virtue of the acts described in paragraphs 9 and 10, Defendants NDI and Anger:

(a) failed to discharge their fiduciary duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying

reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A),

29 U.S.C. § 1104(a)(1)(A);

(b) failed to discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aim in violation of ERISA §404(a)(1)(B), 29 U.S.C. §1104(a)(1)(B);

(c) failed to discharge their fiduciary duties in accordance with the documents and instruments governing the Plan, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D); and

(d) Caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of plan assets to, or use by or for the benefit of, NDI, a party in interest, in violation of ERISA §406(a)(1)(D), 29 U.S.C. §1106(a)(1)(D);

(12) By virtue of the acts described in paragraphs 9 and 10, trustee Brian M.

Anger:

(a) Dealt with the assets of the Plan in his own interest or for his own account, in violation of ERISA §406(b)(1); and

(b) Acted in transactions involving the Plan on behalf of a party whose interests were adverse to the interests of the Plans, its participants and beneficiaries in violation of ERISA §406(b)(2).

PRAYER FOR RELIEF

WHEREFORE, the Secretary of Labor prays that this Court enter an Order:

- (1) Permanently enjoining Defendant Brian M. Anger from violating, or knowingly participating in violations of, the provisions of ERISA §§ 404 and 406, 29 U.S.C. §§ 1104 and 1106;
- (2) Permanently enjoining Defendant Brian M. Anger from serving as a fiduciary to the Plan or any other employee benefit plan covered by ERISA;
- (3) Requiring Defendants to correct the prohibited transactions in which they participated;
- (4) Requiring Defendants to restore to the Plan any and all losses incurred as a result of breaches of their fiduciary duties and violations they committed or for which they are liable, with appropriate interest, including set off of Defendant Brian M. Anger's individual Plan account against the amount of losses, as authorized by 29 U.S.C. §1056(d)(4), if the losses are not otherwise restored to the Plan by Defendants;
- (5) Awarding to Plaintiff the costs of this action; and
- (6) Providing such other relief as is just and equitable.

Howard M. Radzely
Solicitor of Labor

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Office of the Solicitor
J.F.K. Federal Building, Room E-375
Boston, MA 02203
617 565-2500

Frank V. McDermott, Jr.
Regional Solicitor


Maureen L. Canavan
BBO #550969

U.S. Department of Labor
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

Chao v. Brian M. Anger

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Maureen L. Canavan
ADDRESS U.S. Dist/SDL-JFK Fed. Bldg. Km E-375 Boston 02203
TELEPHONE NO. (617) 565-2520

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained here in neither replace nor supplement the filing and service of pleadings or other papers as by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974 is req the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

1. (a) PLAINTIFFS

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

BRIAN M. ANGER, NDI INTERNATIONAL, INC. and
NORTHEAST DISPLAY, INC. 401(k) SAVINGS AND
INVESTMENT PLAN

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(C) Attorney's (Firm Name, Address, and Telephone Number)

Maureen L. Canavan, Esquire (617) 565-2500
U.S. Department of Labor, Office of the Solicitor
JFK Federal Building, Room E-375, Boston, MA 02203

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

| | PTF | DEF | PTF | DEF |
|---|----------------------------|----------------------------|---|---|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 861 HIA (1951) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 860 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | |

V. ORIGIN

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or 5 another district Reopened 6 Multidistrict Litigation 7 Magistrate Judgment

Appeal to District Judge from

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Action arises under the ERISA Act of 1974, 29 USC §1001 et seq., as amended, and to enforce Title 1 of ERISA, pursuant to ERISA §§502 (a)(2) and (5), 29 USC §§1132(a)(2) and (5).

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE 4/30/04 SIGNATURE OF ATTORNEY OF RECORD Maureen L. Canavan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE